

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: WILLIAM EDWARD KILLIAN
ROSE MARY KILLIAN

NO. 05-14629-HB

WILLIAM EDWARD KILLIAN
ROSE MARY KILLIAN

PLAINTIFF

VS.

ADVERSARY NO.: 08-80250-HB

GREEN TREE SERVICING, LLC

DEFENDANT

MOTION TO DISMISS

Comes now, Green Tree Servicing, LLC (hereinafter referred to as "Green Tree"), by and through counsel, and pursuant to Rule 7012(b) of the Bankruptcy Rules of Procedure, moves this Honorable Court to dismiss Plaintiff William Edward Killian and Rose Mary Killian's Complaint seeking damages and injunctive relief (hereinafter referred to as "Complaint") with prejudice because plaintiffs have failed to state a claim upon which relief may be granted and the lack of subject matter jurisdiction. As grounds for this Motion, Green Tree states the following:

1. As to Plaintiffs' First Cause of Action, the Gramm-Leach-Bliley Act does not provide for a private cause of action.
2. As to Plaintiffs' Second Cause of Action, neither the E-Government Act of 2002, nor Local Bankruptcy Rule 9029-1 provide a private cause of action.
3. As to Plaintiffs' Third Cause of Action, neither Rule 9037 of the Bankruptcy Rules of Procedure, nor 11 USC §107(c) provide a private cause of action.
4. Further, as to Plaintiff's Third Cause of Action, Rule 9037 of the Bankruptcy Rules of Procedure became effective on December 1, 2007, and is therefore not applicable to Green Tree's proof of claim filed on November 2, 2005.

5. As to Plaintiffs' Fourth Cause of Action, Plaintiff has sustained no damages, and any and all damages claimed by Plaintiff are speculative and not recoverable under a negligence cause of action.

6. As to Plaintiffs' Fifth Cause of Action, the alleged violations of the South Carolina Unfair Trade Practices Act did not occur in the conduct of any trade of commerce, and therefore the South Carolina Unfair Trade Practices Act is not applicable.

7. As to all Causes of Action, 11 USC §105(a) is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in another provision of Title 11.

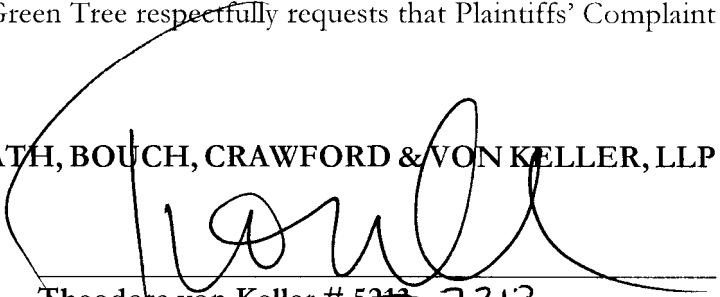
8. As to all Causes of Action, there is no private cause of action under 11 USC §105(a).

9. As to all Causes of Action, Plaintiff has failed to demonstrate a case and controversy and therefore lacks standing to assert any causes of action against Green Tree.

In light of the above information, Green Tree respectfully requests that Plaintiffs' Complaint against it be dismissed with prejudice.

LEATH, BOUCH, CRAWFORD & VON KELLER, LLP

BY:


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Attorneys for Defendant

Green Tree Servicing, LLC

Columbia, South Carolina
March 23, 2009

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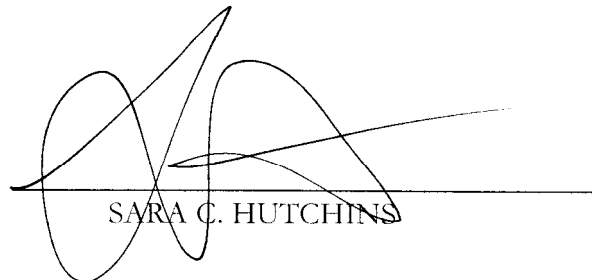
CERTIFICATE OF SERVICE BY MAIL

I, Sara C. Hutchins, an employee of Leath, Bouch, Crawford & von Keller, LLP, do hereby certify that on this day I served the persons indicated below with the Defendant's Motion to Dismiss, by placing a copy of same in the United States Mail, postage pre-paid, in envelopes addressed as follows:

John R. Cantrell, Jr., Esquire
Attorney at Law
Post Office Box 1276
Goose Creek, South Carolina 29445

William K. Stephenson, Jr., Esquire
Trustee
Post Office Box 8477
Columbia, South Carolina 29202

Columbia, South Carolina
March 23, 2009



SARA C. HUTCHINS